IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4006 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAMANJI MOHANJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4006 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Banaskantha at Palanpur, vide order dated April 12, 2001,

Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as seven cases under the Prohibition Act are registered against him which are pending trial and statements of two anonymous witnesses in unregistered cases have been recorded and, therefore, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and public health and, therefore, powers under Section 9 (2) of the Act are exercised by the detaining authority while passing the order of detention by not disclosing the identity of the witnesses.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that non-supply of legible copies of the documents referred to and relied upon by the detaining authority while recording the impugned order of detention has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and infirmity in this regard is violative of the constitutional safeguard enshrined under Article 22 (5) of the Constitution of India and on this ground alone the impugned order of detention deserves to be quashed and set aside and the petitioner deserves to be set at liberty forthwith by allowing the petition.

5. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the fact that some of the pages of the documents of each case registered against the petitioner supplied to him by the detaining authority are not legible and, therefore, he urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the

learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. Similar question arise before this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the petitioner's right of making effective representation to the concerned authority and therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the present case, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representations to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution and hence the order of detention stands vitiated.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)